

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000896-001 DT

10/29/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED:\_\_\_\_\_

JOSEPH VALENTE

ROBIN C MURPHY

v.

ANTHONY D RODGERS (001)  
ARIZONA HEALTH CARE COST  
CONTAINMENT SYSTEM (001)  
PIMA HEALTH SYSTEMS (001)

LOGAN T JOHNSTON  
LESLIE K LYNCH

OFFICE OF ADMINISTRATIVE  
HEARINGS

MINUTE ENTRY

This Court has jurisdiction of this administrative appeal pursuant to the Administrative Review Act, A.R.S. §§ 12-901, et seq. This case has been under advisement and the Court has considered and reviewed the record of the proceedings before the Arizona Health Care Cost Containment System (“AHCCCS”), the Office of Administrative Hearings (“OAH”), and the memoranda submitted by counsel.

**1. Factual and procedural background**

Plaintiff, Joseph Valente, a 6 year old boy, has been diagnosed with Alagille Syndrome, a rare congenital liver disorder.<sup>1</sup> Plaintiff has severe reflux, a G-tube for feeding, vomiting with an accompanying lack of appetite or interest in food, malabsorption of vitamins, chronic severe insomnia and sensory sensitivity, among other problems.<sup>2</sup> Plaintiff is eligible for services under the Arizona Health Care Cost Containment System (“AHCCCS”) program known as Arizona

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<sup>1</sup> Director’s Decision, October 22, 2003 (“Director’s Decision”), ¶ 2; Administrative Law Judge Decision , September 24, 2003, (“ALJ Decision”), Findings of Fact (“FOF”), ¶ 1.

<sup>2</sup> *Id.*

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Long Term Care System (“ALTCS”).<sup>3</sup> He has been enrolled with Pima Health Systems/Long Term Care (“PHS”), a contractor with AHCCCS to provide services to AHCCCS members.<sup>4</sup>

Plaintiff’s parents submitted a request to PHS seeking authorization for the provision of sensory integration (“SI”) therapy and osteopathic cranial manipulation for Joseph.<sup>5</sup> PHS denied the requested authorization on the basis that neither SI therapy nor cranial manipulation were medically necessary.<sup>6</sup> Plaintiff’s parents appealed the denial of coverage for these therapies.<sup>7</sup> After an administrative hearing, the ALJ issued an order recommending that the Director of AHCCCS sustain the appeal and that PHS “be ordered to authorize six of each treatment with subsequent reviews to determine whether gains continue to be made.”<sup>8</sup>

The AHCCCS Director essentially reversed the ALJ’s decision and denied the appeal, with certain caveats set forth in his decision.<sup>9</sup> The Director concluded that plaintiff had “failed to meet his burden of proof of showing . . . that SI therapy and/or cranial manipulation are medically necessary....”<sup>10</sup> Plaintiff timely filed an administrative review action in this Court.

Plaintiff contends that he established that the SI therapy and cranial manipulation therapies are medically necessary based on the statements and testimony of medical professionals who have treated Joseph for many years.<sup>11</sup> Plaintiff argues that the Director’s denial of coverage is unsupported by the record, is arbitrary, and is contrary to law. PHS and AHCCCS contend that the Director was within his discretion and the record supports his conclusion that Plaintiff had not established that cranial manipulation is medically necessary and that it is not covered by AHCCCS.<sup>12</sup> Plaintiff also contends that AHCCCS erred in failing to find that Joseph Valente is entitled to receive SI and cranial manipulation therapies under the Early and Periodic Screening, Diagnosis and Treatment (“EPSDT”) Program of AHCCCS.<sup>13</sup> PHS and AHCCCS contend that coverage under EPSDT is not properly before this Court on this appeal because Plaintiff did not raise the issue in the administrative proceedings.<sup>14</sup>

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<sup>3</sup> Director’s Decision, ¶ 2.

<sup>4</sup> Director’s Decision, ¶ 2.

<sup>5</sup> ALJ Decision, FOF ¶ 2.

<sup>6</sup> *Id.*

<sup>7</sup> ALJ Decision, FOF, ¶ 3.

<sup>8</sup> ALJ Decision, Recommended Decision.

<sup>9</sup> Director’s Decision, ¶¶ 5-7.

<sup>10</sup> Director’s Decision, ¶ 7.

<sup>11</sup> Plaintiff’s Opening Brief, April 30, 2004, (“Plaintiff’s Brief”). *passim*. According to plaintiff, the child’s private health insurance plan, Cigna, authorized payment for sensory integration therapy for him. Since this service is now being covered by Cigna, “the only remaining issue regarding sensory integration therapy is reimbursement to the Valentines for the sensory integration assessment.....” *Id.* p. 3.

<sup>12</sup> Defendants Rodgers’ and AHCCCS’S Responsive Memorandum, July 15, 2004, (“AHCCCS Brief”), p. 5; Defendant Pima Health Systems’ Response to Plaintiff’s Opening Brief, June 14, 2004 (“PHS Brief”), p. 3.

<sup>13</sup> Plaintiff’s Brief, p. 17-21.

<sup>14</sup> AHCCCS Brief, p. 2; PHS Brief, pp. 5-7.

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## 2. Standard of Review

The issues in this case concern whether SI and cranial manipulation therapies are medically necessary in Plaintiff's case and whether coverage under the EPSDT program of AHCCCS is properly raised in this appeal. On appeal of an administrative agency's decision pursuant to the Administrative Review Act, the Superior Court determines whether the administrative action was supported by substantial evidence, was contrary to law, was arbitrary and capricious, or was an abuse of discretion.<sup>1</sup> As to questions of fact, this court does not substitute its conclusion for that of the administrative agency, but reviews the record only to determine whether substantial evidence supports the agency's decision.<sup>2</sup> Questions of statutory interpretation involve questions of law and the reviewing court is not bound by the administrative agency's conclusion.<sup>3</sup> The reviewing court may draw its own conclusions as to whether the administrative agency erred in its interpretation and application of the law.<sup>4</sup> The question whether substantial evidence supports the agency decision is itself a question of law for *de novo* judicial review.<sup>15</sup> The question for the Court in this case is whether AHCCCS properly interpreted the law in its application of the statute to facts found by the administrative law judge.<sup>16</sup>

## 3. Discussion

The Medicaid program furnishes federal grants to states under a cooperative federal and state venture pursuant to Title XIX of the Social Security Act of 1935, as amended.<sup>17</sup> Medicaid benefits in Arizona are administered by AHCCCS.<sup>18</sup> The AHCCCS program contracts with health plans including PHS to provide eligible persons with covered health services. In order to be a covered service, the service must be "medically necessary."<sup>19</sup> "Medically necessary" is defined in rules adopted by AHCCCS:

"Medically necessary" means a covered service provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state

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<sup>1</sup> A.R.S. § 12-910(G), *Siegel v. Arizona State Liquor Board*, 167 Ariz. 400, 401, 807 P.2d 1136 (App. 1991).

<sup>2</sup> *Petrlas v. Arizona State Liquor Board*, 129 Ariz 449, 452, 631 P.2d 1107 (App. 1981).

<sup>3</sup> *Seigal v. Arizona State Liquor Board*, *supra*.

<sup>4</sup> *Carondelet Health Services v. Arizona Health Care Cost Containment System Administration*, 182 Ariz. 502, 504, 897 P.2d 1388 (App. 1995).

<sup>15</sup> *Havasut Heights Ranch and Development Corp. v. Desert Valley Wood Products, Inc.*, 167 Ariz. 383, 387 (Ariz. App. 1990).

<sup>16</sup> *See, Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System Administration*, 206 Ariz. 1, 8, 75 P.3d 91, 98 (2003).

<sup>17</sup> 42 U.S.C. §§ 1396 et seq.

<sup>18</sup> A.R.S. § 36-2601 et seq.

<sup>19</sup> A.R.S. § 36-2907(A).

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law to prevent disease, disability, or other adverse health conditions or their progression, or prolong life.<sup>20</sup>

Pursuant to the statute and applicable rules, the Director concluded that Plaintiff had failed to meet his burden of showing that the requested therapies were medically necessary because, according to the Director, he failed to show “SI therapy has been proven by appropriate scientific evidence to be effective....”<sup>21</sup> With respect to cranial manipulation, the Director concluded that the only “appropriate medical study” in the record shows that this therapy is not effective.<sup>22</sup> The Director rejected the evidence offered in support of these therapies as “anecdotal, generic evidence and opinions from Complainant.”<sup>23</sup> For these reasons, the Director rejected the ALJ’s recommended decision and upheld PHS’s denial of coverage for the requested therapies.

**a. The evidence regarding cranial manipulation therapy.**

According to Joseph’s mother, since he was an infant, he has never slept for more than a few hours at a time.<sup>24</sup> Medications were not working and Joseph’s pediatric gastroenterologist recommended that he see Dr. Christian Peters, an osteopathic doctor, who sees special needs children with sleep dysfunction. Dr. Peters began treatment of Joseph with cranial manipulation. Joseph showed “remarkable” improvement since seeing Dr. Peters.<sup>25</sup>

Ms. Valente, provided the written recommendation of three doctors, who have been treating Joseph for years, that support his need for cranial manipulation. Dr. Dveirin, has been Joseph’s pediatrician since Joseph’s birth and is experienced in caring for children with complex and severe medical problems such as Joseph has.<sup>26</sup> According to Dr. Dveirin, it is very important the Joseph continue this therapy.<sup>27</sup> Dr. Ghishan is a Professor of Pediatrics and Physiology at Steel Memorial Children’s Research Center where Joseph as been seen since infancy.<sup>28</sup> Dr. Ghishan said that Dr. Peter’s treatment has resulted in substantial improvement in Joseph’s sleep disorder and should be continued.<sup>29</sup> Dr. Newmark, has treated Joseph for two years, said that the treatment had resulted in vast improvement in Joseph’s sleeping patterns and had benefited his overall health substantially.<sup>30</sup>

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<sup>20</sup> A.A.C. R 9-22-101.

<sup>21</sup> Director’s Decision, ¶ 5.

<sup>22</sup> Director’s Decision, ¶ 6.

<sup>23</sup> Director’s Decision, ¶¶ 5-6.

<sup>24</sup> ALJ Decision, FOF ¶ 7.

<sup>25</sup> ALJ Decision, FOF ¶ 7; Testimony of Dr. Peters, transcript pp. 32-33; Mrs. Valente, transcript p.39.

<sup>26</sup> Ex. 19, Letter from Keith Dveirin, M.D., August 28, 2003.

<sup>27</sup> *Id.*

<sup>28</sup> Ex.20, Letter From Faye K. Ghishan, M.D., September 1, 2003.

<sup>29</sup> *Id.*

<sup>30</sup> Ex 21. Letter from Sanford C. Newmark, M.D., September 3, 2003.

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The Director referred to the evidence from three treating physicians as “letters from various professionals supporting the efficacy of cranial therapy.”<sup>31</sup> He called them “subjective and anecdotal evidence” and “insufficient to establish medical necessity of cranial manipulation.”<sup>32</sup> The attending physician’s opinion is entitled to considerable weight in making a determination of medical necessity. “The decision of whether or not certain treatment of a particular type of surgery is ‘medically necessary’ rests with the individual recipient’s physician and not with clerical personnel or government officials.”<sup>33</sup> In addition, the Medicaid statute and regulatory scheme create a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.<sup>34</sup> The Director dismissed the evidence supplied by Joseph’s treating physicians as anecdotal and subjective. His failure to give the required deference to the opinions of three treating physicians is contrary to law. The director erred as matter of law in that he concluded that the opinions of three treating physicians were “insufficient to establish medical necessity of cranial manipulation.” On the contrary, the opinions of three treating physicians are presumed persuasive.

Dr. Russell represented PHS and testified on its behalf. Dr. Russell has been the medical director at PHS for the past three years. He is not a treating physician for Joseph Valente and his specialty is preventative medicine and ambulatory medicine.<sup>35</sup> Dr. Russell testified that cranial manipulation was denied because he determined that the treatment has not been proven to be effective. His opinion is based on one study and a literature review that questioned the efficacy of cranial manipulation therapy.<sup>36</sup> The study itself and the literature review were not offered in evidence. The information Dr. Russell provided about the study and literature was general and not sufficient to draw any conclusion regarding the efficacy of the treatment in a particular case.<sup>37</sup>

The question whether substantial evidence supports the agency decision is itself a question of law for *de novo* judicial review.<sup>38</sup> The Director’s conclusion that Plaintiff had not established that the two therapies are medically necessary is not supported by substantial evidence.<sup>39</sup> The medical necessity of the therapies is supported by three treating physicians. The Director’s conclusion to the contrary is not supported by substantial evidence.

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<sup>31</sup> Director’s Decision, ¶ 6.

<sup>32</sup> *Id.*

<sup>33</sup> Weaver v. Reagen, 886 F.2d 194, 199 (8<sup>th</sup> Cir. 1989)(under Medicaid Act) quoting Pinneke v. Preisser, 623 F.2d 546 (8<sup>th</sup> Cir. 1980); See, Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System Administration, 206 Ariz. 1, 75 P.3d 91 (2003)(Question whether patient has ‘emergency medical condition’ as required for treatment of illegal aliens under AHCCCS is to be determined largely by the expertise of health care providers.)

<sup>34</sup> Weaver v. Reagen, 886 F. 2d at 200.

<sup>35</sup> Transcript, p. 20.

<sup>36</sup> Transcript, 43-46. The study involved two cranial therapists.

<sup>37</sup> ALJ Decision ¶¶ 6-7; Transcript pp. 42-44.

<sup>38</sup> Havasu Heights Ranch and Development Corp. v. Desert Valley Wood Products, Inc., 167 Ariz. at 387.

<sup>39</sup> Plaintiff said that the only issue remaining regarding Sensory Integration Therapy is whether AHCCCS must cover the assessment for that therapy because the SI therapy is now covered by CIGNA, Plaintiff’s primary insurer.

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**b. Did the Director err in failing to find that cranial manipulation and SI therapies for Joseph Valente should have been authorized under the Early Periodic Screening and Treatment (“EPSDT”) program?**

Plaintiff contends that the requested therapies should have been authorized by the Director under the EPSDT program of Medicaid. Defendants argue that coverage under EPSDT is not properly before the Court because Plaintiff did not raise it in the proceedings below.

A state is not obliged to participate in the Medicaid program. However, a state must operate its program in compliance with federal statutory and regulatory requirements if it elects to take part in Medicaid.<sup>40</sup> Arizona participates in Medicaid with its AHCCCS program. Federal Medicaid law requires participating states to provide a range of mandatory medical services to Medicaid recipients.<sup>41</sup> Among the mandatory medical services required is the EPSDT program for Medicaid eligible children under the age of 21.<sup>42</sup> Arizona complies with that requirement and provides the medical services required by EPSDT.<sup>43</sup>

**(1) Is EPSDT properly raised in this appeal?**

Neither the ALJ’s Decision nor the Director’s Decision addresses the EPSDT program and Plaintiff’s putative rights to coverage for the requested therapies under that program. Defendants contend that Plaintiff did not raise the argument that the EPSDT program mandates coverage before the hearing officer, and it is too late to raise the issue here.<sup>44</sup> “The Superior Court is limited to the questions properly raised before the administrative hearing....”<sup>45</sup> Moreover, failure to raise an issue at an administrative hearing that the administrative tribunal is competent to hear waives that issue.<sup>46</sup> The purpose of this requirement is to clearly apprise the agency of what is being challenged.<sup>47</sup>

Plaintiff concedes that a party cannot raise new issues in an appeal of an administrative decision. However, Plaintiff argues that the EPSDT program was raised before the hearing

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Plaintiff’s Brief, p. 3. The record includes the opinions of three treating physicians, a treating SI therapist, and an occupational therapist specializing in pediatric feeding that SI therapy is medically necessary in Joseph’s case. ALJ Decision, ¶¶ 3-5. Just as with respect to the record regarding cranial manipulation, the Director erred in discounting the opinions of treating physicians with respect to S. I. therapy. Because the record supports the conclusion that SI therapy is medically necessary, it follows that assessment for that therapy is likewise ‘medically necessary’ for Joseph Valente. AHCCCS should cover the assessment for SI therapy in this case.

<sup>40</sup> *Visser v. Taylor*, 756 F. Supp. 501 (D. Kan. 1990).

<sup>41</sup> 42 U.S.C. § 1396a.

<sup>42</sup> 42 U.S.C. §§ 1396a(a)(43), 1396d(a)(4)(B).

<sup>43</sup> A.A.C. R9-22-213, Early and Periodic Screening, Diagnosis, and Treatment Services.

<sup>44</sup> PHS Brief, p. 5; AHCCCS Brief, pp. 1-2.

<sup>45</sup> *Madsen v. Fendler*, 128 Ariz. 462, 466, 626 P.2d 1094, 1098 (1981).

<sup>46</sup> *Neal v. City of Kingman*, 169 Ariz. 133, 136, 817 P.2d 937, 940 (1991).

<sup>47</sup> *See, Neal v. City of Kingman*, 169 Ariz. at 136, 817 P.2d at 940.

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officer.<sup>48</sup> Plaintiff submitted parts of the AHCCCS policy manual regarding EPSDT as an exhibit in the hearing.<sup>49</sup> Plaintiff's mother, who represented him at the hearing, questioned witness Mary O'Connell regarding the policy and Ms. O'Connell's testimony refers to the AHCCCS treatment policy in the section regarding EPSDT and specifically reads into the record the EPSDT definition of "treatment."<sup>50</sup> Ms. Valente also referred to Joseph's qualification for Title 19 long-term care. During the hearing, Ms. Valente specifically raised the federal requirements and the definition of EPSDT mandated treatment. She submitted AHCCCS's own manual regarding EPSDT in support of her claim for coverage for the requested therapies. She did not specifically argue that EPSDT required coverage of the therapies, but she argued that AHCCCS required coverage.

Joseph Valente is 6 years old. He was represented by his mother and not by counsel in the hearing. Ms. Valente is not held to a standard of clearly articulating a legal theory if she presented a factual basis for that theory.<sup>51</sup> The facts which form the basis of the complaint and the nature of the complaint itself can give "fair notice of what will be challenged on appeal."<sup>52</sup> Here the defendant AHCCCS administers the program in question and AHCCCS's own manual is evidence in the record regarding the program. Moreover, AHCCCS is affirmatively required to inform members, such as Plaintiff, of their entitlement to benefits under the EPSDT program.<sup>53</sup> Because Arizona's EPSDT program is part of the record, and because AHCCCS is required to administer that program and is required to advise Plaintiff of his benefits under the program, AHCCCS can hardly claim surprise that the issue is raised here. AHCCCS does not need to be protected from surprise at this claim by Joseph Valente. The question whether Joseph is entitled to the therapies under the EPSDT program is properly raised in this appeal.<sup>54</sup>

**(2) Is Plaintiff entitled to benefits for the requested therapies under the EPSDT program of AHCCCS?**

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<sup>48</sup> Plaintiff's Reply Brief, pp. 12-13.

<sup>49</sup> Exhibit 16. AHCCCS Medical Policy Manual, Chapter 400 – Medical Policy for Maternal and Child Health, Policy 430 – EPSDT Services.

<sup>50</sup> Transcript, pp. 9-10.

<sup>51</sup> *Neal v. City of Kingman*, 169 Ariz. at 136, 817 P.2d at 940. "We are aware that in many appeals of this type . . . the parties are not represented by counsel at the administrative level. While the statute does not require that the notice of appeal specify the precise legal theory or theories upon which an appellant relies, it must, in some fashion, give fair notice of what will be challenged on appeal. . . . [This] can be done by setting forth the facts which form the basis of the complaint and the nature of the complaint itself." *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> 42 U.S.C. § 1396a(43).

<sup>54</sup> Because Defendant AHCCCS had an affirmative obligation to advise Plaintiff of his entitlement to benefits under that program, if denying benefits, it must deny them under that program. Accordingly, Defendant cannot complain that Plaintiff did not raise the EPSDT program below. At a minimum, it cannot be said that Plaintiff waived his rights under that program.

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The state plan under Medicaid must include the provision of EPSDT services.<sup>55</sup> The federal law lists in detail the screening services that a state plan must expressly include. With regard to treatment services, it states that EPSDT means “[s]uch other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.”<sup>56</sup> States are prohibited from restricting EPSDT benefits to those benefits offered under a state’s Medicaid program.<sup>57</sup> In other words, services that might be optional for a state with regard to adult beneficiaries are obligatory with respect to Medicaid eligible children.

Arizona must provide AHCCCS eligible children with all services that fall within the ambit of “medical assistance” as defined by the federal Medicaid statute. EPSDT services are mandated if those services are a type of “medical assistance,” as defined by the statute.<sup>58</sup> Mandated EPSDT listed services include: “other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.”<sup>59</sup>

According to the definition, a medical or remedial service recommended by a physician or other licensed health care professional should be covered by the EPSDT program if it will maximize the reduction of a physical or mental disability and restore an individual to the best possible functional level. “Required treatment includes anything which is to make a condition, even a long-term condition like mental illness, more tolerable.”<sup>60</sup> Under this broad definition, the requested therapies for Joseph Valente as recommended by his three treating physicians are EPSDT services that AHCCCS is mandated to provide. Both cranial manipulation and SI assessment are necessary to restore him to his best possible functional level.

Defendant PHS argues that even under the mandates of the EPSDT program, a procedure still must be medically necessary and that the record here does not support a finding of medical necessity for the very reasons dictated by the Director.<sup>61</sup> Defendant relies on Salgado v. Kirschner to argue that “EPSDT expands service categories for children, but says no more about their substantive content than does the Medicaid statute in general.”<sup>62</sup> Nonetheless, cases

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<sup>56</sup> 42 U.S.C. §1396d(r)(5).

<sup>57</sup> 42 U.S.C. § 1396d(r).

<sup>58</sup> 42 U.S.C. § 1396d(a).

<sup>59</sup> 42 U.S.C. § 1396 d(a)(13).

<sup>60</sup> Collins ex rel. Collins v. Hamilton, 231 F. Supp 2d 840, 849 (S.D. Ind. 2002).

<sup>61</sup> PHS Brief, pp. 6-7.

<sup>62</sup> Salgado v. State of Arizona, 179 Ariz. 301, 878 P.2d 659 (1994). There, the Arizona Supreme Court held that because Arizona had decided to cover liver transplants for eligible children, federal law required the State to also cover liver transplants for eligible adults, such as Salgado. The Court’s comment regarding EPSDT is not



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specifically addressing the EPSDT program consistently affirm the broad mandatory coverage of that program and the importance of the treating physician or health care professional in determining medical necessity.<sup>63</sup>

#### 4. Conclusion

In this case, although the AHCCCS Director is charged with the responsibility of applying the law to the facts, he was required to defer to those facts found by the administrative law judge.<sup>64</sup> The Director did not do this. The ALJ found that three doctors, who have been treating Joseph for years, support his need for the requested cranial manipulation therapy and the SI assessment. The Director discounted this evidence. The director erred as a matter of law in that he concluded that the opinions of three treating physicians were “insufficient to establish medical necessity of cranial manipulation.” In fact, the opinions of treating physicians regarding medical necessity are particularly persuasive. In addition, the Director’s conclusion that Plaintiff had not established that the two therapies are medically necessary is not supported by substantial evidence. Accordingly, the Director’s Decision is arbitrary, contrary to law, and not supported by substantial evidence.

The question whether Joseph is entitled to the therapies under the EPSDT program is properly raised in this appeal because the factual basis for the claim under the EPSDT program was part of the administrative proceedings and because AHCCCS has an affirmative duty to advise Plaintiff of his benefits under the program. The requested therapies clearly fall within the covered services under the EPSDT program. Accordingly, this Court concludes that the Director erred when he rejected the ALJ Decision in this case.

**IT IS THEREFORE ORDERED** granting the relief requested by the Plaintiff in his complaint.

**IT IS FURTHER ORDERED** reversing the order of the AHCCCS Director in this case.

**IT IS FURTHER ORDERED** that counsel for the Plaintiff shall lodge a judgment consistent with this minute entry opinion by December 4, 2004.

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particularly significant. The case turned on the federal requirement that if a state chooses to cover transplants, it must cover them for all similarly situated individuals. The court decided that excluding coverage solely because a person is over 21 was a violation of that requirement. The case turned on the particular federal law regarding transplants. It does not counter the cases and indeed the language of the federal law mandating certain medical services for eligible children even if those services are not covered by the State’s plan.

<sup>63</sup> *E.g., Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Servs.* 293 F.3d 472; *Collins ex rel Collins v. Hamilton, supra*.

<sup>64</sup> *See, Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System Administration*, 206 Ariz. 1, 8, 75 P.3d 91, 98 (2003).